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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/961,203	09/24/2001	Tomohiko Nakanishi	12-010	6525
23400 75	590 03/02/2004	EXAMINER		INER
POSZ & BETHARDS, PLC			BOS, STEVEN J	
11250 ROGER BACON DRIVE SUITE 10			ART UNIT	PAPER NUMBER
RESTON, VA 20190			1754	
			DATE MAILED: 03/02/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

•	Application No.	Applicant(s)				
	09/961,203	NAKANISHI ET AL.				
Office Action Summary	Examiner	Art Unit				
	Steven Bos	1754				
The MAILING DATE of this communication app Period for Reply	ears on the cover sheet with the c	orrespondence address				
A SHORTENED STATUTORY PERIOD FOR REPLY THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply - If NO period for reply is specified above, the maximum statutory period w - Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	ol6(a). In no event, however, may a reply be tirwithin the statutory minimum of thirty (30) day ill apply and will expire SIX (6) MONTHS from cause the application to become ABANDONE	nely filed rs will be considered timely. I the mailing date of this communication.				
Status						
1) Responsive to communication(s) filed on 20 No.	ovember 2003.					
2a)⊠ This action is FINAL . 2b)☐ This	This action is FINAL . 2b) This action is non-final.					
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is						
closed in accordance with the practice under E	x parte Quayle, 1935 C.D. 11, 4	53 O.G. 213.				
Disposition of Claims						
4)⊠ Claim(s) <u>1-11</u> is/are pending in the application.						
4a) Of the above claim(s) is/are withdrawn from consideration.						
5) Claim(s) is/are allowed.						
6)⊠ Claim(s) <u>1-11</u> is/are rejected.						
7) Claim(s) is/are objected to.						
8) Claim(s) are subject to restriction and/or	r election requirement.					
Application Papers						
9) The specification is objected to by the Examine	г.					
10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.						
Applicant may not request that any objection to the	- · ·					
Replacement drawing sheet(s) including the correct						
11) ☐ The oath or declaration is objected to by the Ex	aminer. Note the attached Office	: Action or form PTO-152.				
Priority under 35 U.S.C. § 119						
12) ☐ Acknowledgment is made of a claim for foreign a) ☐ All b) ☐ Some * c) ☐ None of:	priority under 35 U.S.C. § 119(a)-(d) or (f).				
1. Certified copies of the priority documents have been received.						
2. Certified copies of the priority documents have been received in Application No						
Copies of the certified copies of the prior	ity documents have been receiv	ed in this National Stage				
application from the International Bureau						
* See the attached detailed Office action for a list	of the certified copies not receive	∌d.				
Attachment(s)						
Attachment(s) 1) Notice of References Cited (PTO-892)	4) Interview Summary	/ (PTO-413)				
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)						
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 11/20/2003	6) Other:	atent Application (FTO-192)				
S. Patent and Trademark Office						

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Beauseigneur et al. '570. Note the claims of the reference.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beauseigneur et al. '570 in view of Strehlau et al. '904 and Uchikawas et al. '221.

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Beauseigneur et al. Teaches the porous catalyst of the instant claims to include the features of a ceramic material for the support, cordierite is found in example 5, microcracks and the catalytic elements of the instant claimed invention are found in the specification.

Beauseigneur fails to teach the instant claimed features of the use of alkali metals and alkaline earth metals in the composition. The reference Beauseigneur also fails to teach the claimed features of defects in the support material.

Strehlau teaches the use of alkali metals and alkaline earth metals at column 7 lines 45 and 46. Uchikawas teaches at column 1 line 61 the feature of a lattice defect in this type of composition.

The instant claimed invention is obvious from the teachings of the reference combination applied. All of the references are to similar catalyst compositions, and it would be obvious to combine their teachings to arrive at the instant claimed invention.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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Claims 1-11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-41 of copending Application No. 09/960,498. Although the conflicting claims are not identical, they are not patentably distinct from each other because they overlap in scope of subject matter claimed.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Applicant's arguments filed November 20, 2003 have been fully considered but they are not persuasive.

Applicant argues that Beauseigneur does not disclose the limitations of instant claim 1 and that claim 1 of the reference recites "walls containing washcoat particles bonded to the walls" so that the catalyst is not loaded "directly" onto a base ceramic surface as in instant claim 1.

However col. 4, lines 1-3, col. 10, lines 49-51 and claim 16 all teach that the catalyst is deposited within the pores on the surfaces of the pores of the porous ceramic substrate.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

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Applicant argues that claims 1 and 17 of Tanaka et al. require an antievaporation metal layer on the catalyst particles. However the instant claims have comprising language which would not exclude such a limitation.

Applicant argues that the other independent claims require a trap layer. However the instant claims have comprising language which would not exclude such a limitation.

Applicant argues that the instant claims call for a substrate that contains metal elements having Nox absorbing capacity.

These are taught by claim 7 of the copending application.

Therefore the instant claims are of broader scope than those of the copending application and thus would have been obvious.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Bos whose telephone number is 571-272-1350. The examiner can normally be reached on M-F, 8AM-6PM but is on increased flexitime sch.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Stéven Bos

Primary Examiner

sjb